



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 5, 2004

Mr. George E. Grimes, Jr.  
Walsh, Anderson, Brown,  
Schultz & Aldridge, P.C.  
P. O. Box 460606  
San Antonio, Texas 78246-0606

OR2004-0867

Dear Mr. Grimes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 195849.

The Floresville Independent School District (the "district"), which you represent, received a request for payroll reports and indenture apprenticeship documents of D.F.W. Insulation ("DFW") from April 2003 to August 2003, a copy of all wage scales on the project and the district's process for determining the reasoning behind the wage scales, and any information, correspondence, and interactions between the district and the Association of Building Contractors ("ABC"). You state that some information has been or will be made available to the requestor. You state that the district possesses no information responsive to the remaining portions of the request and claim that any responsive information does not constitute public information under section 552.002 of the Government Code.<sup>1</sup>

The Act applies only to public information. See Gov't Code §§ 552.021, .221. Section 552.002(a) of the Act defines "public information" as information "collected,

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<sup>1</sup>The Public Information Act (the "Act") compels disclosure of public information that is in existence, but it does not generally require a government entity to prepare or assemble new information in response to a request. See Gov't Code § 552.002(a); *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 268 (Tex. Civ. App.—San Antonio 1978, writ dismissed) (ruling that a government agency could not be required to make copies of documents no longer in its possession).

assembled, or maintained under a law or ordinance or in connection with transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it.” Gov’t Code § 552.002(a). Thus, information is subject to the Act even if a governmental body does not physically possess the information, if the information is collected, assembled, or maintained for a governmental body and the governmental body owns the information or has a right of access to the information.

In this instance, the requestor seeks, in part, access to “‘Payroll Reports’ from [DFW].” You state that the requestor seeks information pertaining to a public works project owned by the district, in which DFW is a third-party sub-subcontractor to the general contractor. Chapter 2258 of the Government Code is applicable to prevailing wage rates for public works projects. Section 2258.021(a) provides that workers, laborers, or mechanics employed by or on behalf of the state or a political subdivision of the state shall be paid “[n]ot less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed[.]” Section 2258.024 requires the contractor and each subcontractor to keep a record of the name and occupation of each worker and the actual per diem wages paid to each worker employed on the project. *See id.* § 2258.024(a). Section 2258.024 also provides that this record “shall be open at all reasonable hours to inspection by the officers and agents of the public body.” *Id.* § 2258.024(b); *see also id.* § 2258.058 (criminal penalty for violation of Gov’t Code § 2258.024).

You state that the requested information is prepared by DFW in compliance with section 2258.024 of the Government Code and not as an agent of the district. You further state that the district does not maintain the requested information. Accordingly, we find that the requested payroll records do not constitute information “collected, assembled, or maintained . . . by” the district for purposes of section 552.002(a)(1) of the Government Code. Likewise, we find that DFW does not prepare the requested payroll records as the agent of the district. Instead, DFW does so in the performance of its own statutory duties under section 2258.024 of the Government Code. Therefore, we conclude that the payroll records are not information collected, assembled, or maintained for the district for purposes of section 552.002(a)(2). *See also* Open Records Decision No. 558 (1990) (information is subject to chapter 552 of Government Code, even though it is not in governmental body’s physical custody, where third party prepared information on governmental body’s behalf and makes it available to governmental body). Consequently, the requested payroll records do not constitute public information under section 552.002 of the Government Code, and thus the district is not required to make these records available to the requestor.

Finally, you state that the district does not maintain “indentured apprenticeship documents” or any documents containing “information, correspondence, and interactions between the [district] and ABC.” In this regard, we reiterate that the Act applies only to information in existence at the time the governmental body receives the request for information. *See* Open Records Decision Nos. 452 at 2-3 (1986). The Act does not ordinarily require a

governmental body to obtain information not in its possession. Open Records Decision Nos. 558 (1990), 499 (1988). Furthermore, the Act does not require a governmental body to create information in response to a request. *See* Open Records Decision 452 (1986). However, a governmental body must make a good-faith effort to relate a request for information to any responsive information that is within the governmental body's custody or control. *See* Open Records Decision No. 561 at 8-9 (1990).

To summarize, we conclude that, because the district does not have any information responsive to the request that it seeks to withhold, it has no obligation with respect to those aspects of the request and need not release any information beyond that which it has provided, or will provide, to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

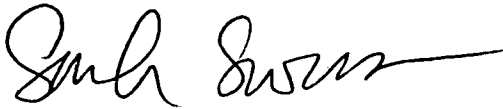
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sarah Swanson', with a long horizontal flourish extending to the right.

Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/lmt

Ref: ID# 195849

c: Mr. Francisco Valenzuela  
Internation Association of Heat & Frost  
Insulators & Asbestos Workers  
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